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JERRY.SHORMA@HP.COM

ipa.mail@hp.com

laura.m.clark@hp.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JULIE A. SYMONS and SHARAD SINGHAL

Appeal 2009-007531
Application 09/971,857
Technology Center 2400

Before THOMAS S. HAHN, ELENI MANTIS MERCADER, and
CARL W. WHITEHEAD, JR., *Administrative Patent Judges*.

HAHN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants invoke our review under 35 U.S.C. § 134(a) from the final rejection of claims 1-27. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

STATEMENT OF THE CASE

Appellants claim a system and method for managing switched network infrastructures. Disputed elements include having an expected infrastructure description stored for “a network having a switched infrastructure without hubs,” and identification of changes from that expected description “including hardware, software, or firmware configuration changes.” Only differences between the expected description and a current description are displayed.¹ Claim 1 is illustrative:

1. A method for managing a switched network infrastructure comprising:

storing an expected network infrastructure description of a network having a switched infrastructure without requiring hubs, said network having a data center;

comparing said expected network infrastructure description with a current network infrastructure description, wherein said comparing detects any new devices in the network infrastructure, any changed configuration of devices in the network including hardware, software or firmware configuration changes, and any devices or device interfaces that have been removed or have failed in the network;

outputting a result of said comparing to an operation terminal at said data center, wherein only differences between said expected network infrastructure description and said current network infrastructure description are displayed; and

providing said result in a user accessible format on said operation terminal at said data center operation for utilization by a data center operator.

¹ See generally Spec. 8:16-26; 9:13-15; 12:4-11; 14:25-28; 15:26-28; Figs. 2 and 3.

Rejections²

The Examiner, under 35 U.S.C. § 103(a), rejected:

1. Claims 1-5 and 8-9 as being unpatentable over Arkko (U.S. 6,535,517 B1), and Fitzgerald (U.S. 5,581,764) (Final Action 6-10);
2. Claims 6-7 as being unpatentable over Arkko, Fitzgerald, and Benfield (US 2003/0009552 A1) (Final Action 10-12);
3. Claims 10-16, 18-25, and 27 as being unpatentable over Arkko, Aoyagi (US 2002/0032761 A1), and Ootani (US 2002/0135610 A1) (Final Action 12-16); and
4. Claims 17 and 26 as being unpatentable over Arkko, Aoyagi, Ootani, and Fitzgerald (Final Action 17-18).

Appellants' Contentions

Independent claim 1 is separately argued (App. Br. 10-13). Appellants do not separately argue the claims dependent from base claim 1. Accordingly, we select claim 1 as representative. *See* 37 C.F.R. § 37.41 (c)(1)(vii). Appellants' arguments that the § 103 rejection of claim 1 is in error include contentions that the relied on Arkko reference fails to teach or suggest the recited (i) "network having a switched infrastructure without requiring hubs" and (ii) displaying "only differences between said expected network infrastructure description and said current network infrastructure description" (App. Br. 10-12). Further, Appellants argue that the

² Appellants' Specification was objected to under 35 U.S.C. § 112, first paragraph, as failing to adequately teach making and using a claimed "network having a switched infrastructure without requiring hubs" (Final Action 4-5). Further, claims 1-27 were rejected under 35 U.S.C. § 112, first paragraph, for the reasons identified in objecting to the Specification (Final Action 5). The Examiner, after considering Appellants' Appeal Brief, withdrew both this objection and rejection (Ans. 3, 17).

Examiner's reliance on Fitzgerald is in error because the reference fails to teach or suggest the recited "detect[ing] . . . any changed configuration . . . including hardware, software or firmware configuration changes" (App. Br. 11). Finally, Appellants argue that Fitzgerald "teach[es] away from a data center," which is a recited element, and, consequently, the Examiner erred in combining Arkko and Fitzgerald (App. Br. 12).

Next, Appellants group independent claims 10 and 19 along with their rejected dependent claims, which are not separately argued (App. Br. 14-17). The two independent claims are contended to be patentable because according to the Appellants the cited prior art fails to teach or suggest similarly recited limitations. In addition to repeating arguments identified *supra* that Arkko fails to teach or suggest elements that are also recited in claim 1, Appellants argue that neither alone nor in combination do Aoyagi and Ootani teach or suggest the claimed "detect[ing] . . . any changed configuration of devices in the network including hardware, software or firmware configuration changes" (App. Br. 15).

Issues on Appeal

1. Did the Examiner err under 35 U.S.C. § 103(a) in rejecting representative claim 1 because Arkko and Fitzgerald alone or in combination do not teach or suggest claim limitations at issue?
2. Did the Examiner err under 35 U.S.C. § 103(a) in rejecting representative claim 1 because Fitzgerald teaches away from Arkko?
3. Did the Examiner err under 35 U.S.C. § 103(a) in rejecting the independent claims 10 and 19 because Arkko, Aoyagi, and Ootani alone or in combination do not teach or suggest claim limitations at issue?

ANALYSIS

Claim 1

Appellants commence by contending that Arkko fails to “teach or suggest the claimed . . . storing an expected network infrastructure description of a network having a switched infrastructure without requiring hubs, said network having a data center (emphasis added)” (App. Br. 10).

The Examiner indicates that to an ordinarily skilled artisan “a switched infrastructure *without requiring hubs*” (emphasis added) would be construed as an infrastructure that neither requires hubs nor requires that hubs be excluded (Ans. 18). We find the Examiner’s interpretation to be consistent with the record. For example, Appellants, in asserting that this limitation is enabled (*see* fn2), quote from the Specification at p. 8, ll. 16-26, which in part discloses that “[i]n a switched network, the hubs used to couple devices in the network are replaced with switches” (App. Br. 8) (underlining deleted). This disclosure describes a network that includes hubs that are “replaced” with switches, and, as such, hubs are neither required nor excluded. Accordingly, we adopt the Examiner’s interpretation. *See In re Thrift*, 298 F.3d 1357, 1364 (Fed. Cir. 2002).

From reviewing Arkko, the Examiner quotes disclosures in 2:20-55, which, in part, state that “processing devices are interconnected via an Ethernet network and include a router that is a gateway to the Internet” (Ans. 19). The Examiner consequently finds that Arkko’s Ethernet network is linked through routers and/or gateways and not hubs (*id.*). Appellants contest this finding in the Reply Brief with the contention that the Examiner’s rejection relies on “conjecture[] or speculation” and not factual bases (Reply Br. 2). Appellants acknowledge that the Examiner cites Arkko

disclosures (Reply Br. 2), but do not explain any different interpretation from the disclosures, or cite to any evidence, or assert any argument, other than the conclusory negating contention. In fact, Appellants acknowledge that Arkko teaches utilization of “telecommunication switches” (Reply Br. 2). Based on our review of the record, we agree with the Examiner’s finding that Arkko teaches the first disputed limitation.

Appellants next contend that Fitzgerald fails to teach or suggest the recited “detect[ing] . . . any changed configuration . . . including hardware, software or firmware configuration changes” (App. Br. 11). The Examiner replies with cites to and quotes from Fitzgerald’s disclosures, and correlated findings in the Response to Argument section of the Examiner’s Answer (Ans. 20-22). From our review of the record and Appellants’ silence as to the Examiner’s findings, we agree with and adopt the Examiner’s findings and conclusion as to the second disputed limitation reading on Fitzgerald’s teachings.

Appellants also contend that Arkko fails to teach or suggest displaying “only differences between said expected network infrastructure description and said current network infrastructure description are displayed” (App. Br. 11-12). The Examiner, as with the other disputed claimed elements, replies with cites to and quotes from Arkko’s disclosures, and correlated findings in the Response to Argument section of the Examiner’s Answer (Ans. 22-25). From our review of the record and Appellants’ silence as to the Examiner’s findings, we agree with and adopt the Examiner’s findings and conclusion as to the third disputed limitation reading on Arkko’s teachings.

Finally, we find Appellants’ argument unavailing that the Examiner erred in combining Arkko and Fitzgerald because Fitzgerald “teach[es] away

from a data center” (App. Br. 12). We are in accord with the Examiner’s finding and conclusion that there is no disclosure in Fitzgerald “whatsoever that criticizes, discredits or otherwise discourages the usage of [a] data center,” and, therefore, Fitzgerald does not teach away as asserted by Appellants. *In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004) (To teach away, prior art must “criticize, discredit, or otherwise discourage the solution claimed.” Mere disclosure of alternative embodiments is not a teaching away.) Further, from our review of the record and Appellants’ silence as to the Examiner’s findings from Fitzgerald, we agree with and adopt the Examiner’s findings and conclusions (*see* Ans. 26).

We, accordingly, sustain the rejection of representative claim 1. We also sustain the rejections of dependent claims 2-9, which are not separately argued (App. Br. 13).

Claims 10 and 19

Appellants do not separately argue independent claims 10 and 19, but rely on arguing limitations that are similarly recited in these claims (*see, e.g.,* App. Br. 14). Arguments are directed to limitations also recited in claim 1 and found by the Examiner to be taught or suggested in Arkko are addressed *supra*. Appellants, in making these arguments for claims 10 and 19, have not cited to different evidence nor altered the substance of their arguments (*see* App. Br. 14-16). Accordingly, for claims 10 and 19, we continue to agree with and adopt the Examiner’s findings and conclusions as to these disputed limitations reading on Arkko teachings.

Appellants further argue that neither alone nor in combination do Aoyagi and Ootani teach or suggest the claimed “detect[ing] . . . any changed configuration of devices in the network including hardware, software or firmware configuration changes” (App. Br. 15). The Examiner identifies that the recited limitation is drafted in the alternative, i.e., for “hardware, software *or* firmware configuration changes” (emphasis added) (Ans. 27). Then the Examiner identifies that “any configuration change associated with software component, hardware component or firmware component of devices can be interpreted as any changed configuration of devices including hardware, software or firmware configuration changes” (*id.*). Appellants are silent concerning the Examiner’s interpretation. Based on this record, we agree with and adopt the Examiner’s interpretation. The Examiner next finds that “Aoyagi discloses the process of detecting a change of IP address of the network device by comparing the previously collected data with the current set of data, for example, see claim 13 and pg. 25 [0468-0477]” (Ans. 27). Further, the Examiner identifies that “the IP address change is a configuration change of hardware element of the device and/or configuration change of device itself” (Ans. 28). Again, from our review of the record and the Appellants’ silence as to these findings, we agree with and adopt the Examiner’s findings and conclusion as to this disputed limitation reading on Aoyagi’s teachings.

We, accordingly, sustain the rejection of independent claims 10 and 19. We also sustain the rejections of dependent claims 11-18 and 20-27, which are not separately argued (App. Br. 17).

CONCLUSIONS

1. The Examiner has not erred under 35 U.S.C. § 103(a) in rejecting representative claim 1 because Arkko and Fitzgerald teach the claim limitations at issue.
2. The Examiner has not erred under 35 U.S.C. § 103(a) in rejecting representative claim 1 because Fitzgerald teaches or suggests a data center.
3. The Examiner has not erred under 35 U.S.C. § 103(a) in rejecting the independent claims 10 and 19 because Arkko, Aoyagi teaches the claim limitations at issue.
4. Claims 1-27 are not patentable.

ORDER

The Examiner's decision rejecting claims 1-27 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

ELD